

SERVICE DATE – APRIL 24, 2012

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 1073X

ALABAMA & FLORIDA RAILWAY CO., INC.—ABANDONMENT EXEMPTION—IN  
GENEVA, COFFEE AND COVINGTON COUNTIES, ALA.

Decided: April 23, 2012

This decision reopens this proceeding to issue a notice of interim trail use or abandonment (NITU).

Alabama & Florida Railway Co., Inc. (A&F) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon its line of railroad (which constitutes A&F's entire rail system) between milepost 581.3 at Andalusia, and milepost 624.2 at Geneva, a distance of 42.9 miles, in Geneva, Coffee and Covington Counties, Ala. (the Line). Notice of the exemption was served and published in the Federal Register on August 9, 2011 (76 Fed. Reg. 48,941-42) (August 2011 notice). The exemption became effective on September 8, 2011.

By decision served on September 7, 2011, the proceeding was reopened and the exemption was made subject to a 180-day public use condition under 49 U.S.C. § 10905 to permit the Alabama Trails Commission (ATC), a government agency interested in the development of recreational trails, or any other interested person to negotiate for acquisition of the right-of-way (ROW) for public use.<sup>1</sup> The public use condition expired on March 6, 2012. By decision served on March 20, 2012, a request by ATC to extend the public use condition was denied.

By letter filed on March 29, 2012, ATC late filed a request for the issuance of a NITU for the Line<sup>2</sup> to negotiate with A&F for acquisition of the ROW for use as a trail under the National

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<sup>1</sup> The exemption also was made subject to a historic preservation condition under Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f. The Section 106 condition later was removed by decision served on November 15, 2011.

<sup>2</sup> The August 2011 notice provided that requests for trail use/rail banking were to be filed by August 19, 2011. However, in Abandonment & Discontinuance Of Rail Lines & Transportation Under 49 U.S.C. § 10903, 1 S.T.B. 894 (1996) and 2 S.T.B. 311 (1997), the Board retained the policy of accepting requests after the due date when good cause is shown. Because there is no indication that ATC's late-filed request will prejudice any party, it will be accepted. See Wheeling & Lake Erie Ry.—Aban. Exemption—in Starke Cnty., Ohio, AB 227 (Sub-No. 10X), slip op. at 1 n.1 (STB served Nov. 7, 1997).

Trails System Act, 16 U.S.C. § 1247(d) (Trails Act), and 49 C.F.R. § 1152.20.<sup>3</sup> ATC has submitted a statement of willingness to assume full responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the ROW, as required at 49 C.F.R. § 1152.29, and has acknowledged that the use of the ROW for trail purposes is subject to the user's continuing to meet the responsibilities described above and to future reconstruction and reactivation of the ROW for rail service. In a letter filed on March 20, 2012, A&F states that it has no objection to trail use negotiations and that it has entered into an agreement with CSXT, the owner of the real estate underlying the ROW, granting CSXT the right to negotiate trail use on behalf of both CSXT and A&F. By letter filed on April 4, 2012, CSXT states that it agrees to negotiate for interim trail use/rail banking with ATC.

Because A&F and CSXT both agree to ATC's request for a NITU and ATC's request complies with the requirements of 49 C.F.R. § 1152.29, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, A&F may fully abandon the Line. See 49 C.F.R. § 1152.29(d)(1). Use of the ROW for trail purposes is subject to any future use of the property for restoration of railroad operations.

This decision and notice will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. ATC's late-filed request for a NITU under 16 U.S.C. § 1247(d) is granted.
3. Upon reconsideration, the August 2011 notice exempting the abandonment of the Line described above is modified to the extent necessary to permit ATC to negotiate with A&F and CSXT for interim trail use/rail banking of the ROW for a period of 180 days from the service date of this decision and notice (until October 21, 2012).

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<sup>3</sup> ATC previously had sought a NITU by request filed on August 17, 2011. At that time, although CSX Transportation, Inc. (CSXT) agreed to trail use negotiations, A&F did not. Because trail use negotiations under the Trails Act are voluntary and A&F, the carrier seeking abandonment (and thus the appropriate carrier to negotiate for trail use), did not agree to negotiate, the Board denied that NITU request by decision served September 7, 2011.

4. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the ROW.

5. Interim trail use/rail banking is subject to any future use of the property for restoration of railroad operations and to the user's continuing to meet the financial obligations for the ROW.

6. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by October 21, 2012, interim trail use may be implemented. If no agreement is reached by that time, A&F may fully abandon the line. See 49 C.F.R. § 1152.29(d)(1).

8. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.